Supreme Court, U.S.
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92-1968

No. _____

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1992

CORDELIA ANN BODIE,

PETITIONER

v.

CITY OF HUNTSVILLE, et al.,

RESPONDENTS.

PETITION FOR WRIT OF CERTIORARI

TO THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

Cordelia Ann Bodie
Petitioner pro se

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34 pp

QUESTIONS PRESENTED FOR REVIEW

I. Whether a vague "heightened Rule 8" pleading requirement -- selectively applied to civil rights and conspiracy actions -- is a legally permissible ground for dismissal of a civil rights action brought under Title 42, U.S.C. Section 1983?

II. Whether a vague "meritorious claim" pleading requirement -- selectively applied to Section 1983 actions -- is a legally permissible ground for dismissal of a civil rights action as "patently frivolous"?

III. Whether pre-trial statement of the "law of the circuit" is a legally sufficient ground to support the "prevailing party" status of civil rights defendants?

PARTIES TO THIS ACTION, INCLUDING PARENT COMPANIES and SUBSIDIARIES [1]

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1. Petitioner,
Cordelia Ann Bodie, former City Nurse.

v.

Respondents,
City of Huntsville, Alabama,
a municipal government;
Wikle-Thornton-Holcombe & Assoc., Inc.,
Insurance Agency, an Alabama corporation and current division of J. Smith Lanier & Co., Insurance Brokers;
The Healthcare Authority of the City of Huntsville, dba Huntsville Hospital,
a municipal healthcare authority;
Ernest Kaufmann, former President of Huntsville City Council;
Bill Kling, member of City Council;
James Putnam, member of City Council;
Richard Showers, member of City Council;
James Wall, Jr., member of City Council;
Steve Hettinger, Mayor;
Richard Liles, Adm. Asst. to the Mayor;
Errol Fitzpatrick, City Risk Manager;
Larry Hall, City Personnel Director,
until on or about April 1, 1989;
Charles Perry, City Personnel Director,
since on or about April 1, 1989;
James D. Thornton, III., an independent insurance agent, principal in Wikle-Thornton-Holcombe & Assoc., Inc., and authorized representative for St. Paul Fire & Marine Insurance Co.; and
Jeff Hamilton, an agent and employee of Huntsville Hospital.

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NO. _____

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1992

CORDELIA ANN BODIE, PETITIONER

v.

CITY OF HUNTSVILLE, et al., RESPONDENTS

PETITION FOR WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

Petitioner Bodie respectfully prays that a writ of certiorari issue to review the order, opinion, and judgment of the United States Court of Appeals for the Eleventh Circuit applying rules of law as rules of pleading and practice to affirm the private dismissal of a civil rights action and tax costs against a plaintiff.

OPINIONS BELOW

The order of the Court of Appeals is reported in Bodie v. City of Huntsville, 978 F.2d 774 (Table), and the unpublished opinion is set out in Appendix A to this Petition. The judgment of the Court of of Appeals is set out in Appendix B. The unpublished opinion and order of the District Court for the Northern District of Alabama, is set out in Appendix C.

JURISDICTION

The Court of Appeals' order and opinion in this action was filed on March 3, 1993. Timely Petition for Rehearing was filed on March 22, 1993. The Court of Appeals' Denial of Petition for Rehearing was issued on April 12, 1993, and is set out in Appendix D. The jurisdiction of this Court is granted by Title 28, U.S.C.

Section 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Amendment I. to the United States Constitution, provides in pertinent part:

> Congress shall make no law . . . abridging the freedom of speech, . . . or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

Amendment XIV. to the United States Constitution, provides in pertinent part:

> No state shall . . . deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Title 42, U.S.C. Section 1983 (1979), provides in pertinent part:

> Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State . . . subjects, or causes to be subjected, any citizen of

> the United States . . . to the deprivation of any right, privileges or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law . . . for redress.

Title 28, U.S.C. Section 2071 (1988), provides in pertinent part:

> (a) The Supreme Court and all courts established by Act of Congress may from time to time prescribe rules for the conduct of their business. Such rules shall be consistent with Acts of Congress and rules of practice and procedure prescribed under section 2072 of this title.

Title 28, U.S.C. Section 2072 (1988), provides in pertinent part:

> (a) The Supreme Court shall have the power to prescribe general rules of practice and procedure . . . for cases in the United States district courts . . . and courts of appeals.
>
> (b) Such rules shall not abridge . . . any substantive right. All laws in conflict with such rules shall be of no further force or effect . . . .

STATEMENT OF THE CASE

On January 10, 1992, through counsel, Bodie filed suit in the United States District Court for the Northern District of Alabama, Northeastern Division, to recover damages for violation of rights secured by the First and Fourteenth Amendments to the United States Constitution. (R1-1) Prior to responsive pleading or motion, an amended complaint, as a substitute for the original complaint, was filed on February 3, 1992. (R1-3-2)

The complaint alleges, in sum:

General Allegations.

Jurisdiction granted by Title 28, U.S.C. Section 1343(a)(3), for action brought under Title 42, U.S.C. Section 1983; Bodie, a registered nurse, was employed as City Nurse for the City of Huntsville, Alabama, from May 1976 through July 1990;

each defendant's corporate affiliation and position; each defendant acted in both representative capacity and individually; and some specific incidents in the pattern of deliberate conduct which created constructive discharge. [2]

Count I.

Defendant City employees and officials and non-City parties, under color of law,

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2. General Allegations include: the City was added, by a covert endorsement signed by Thornton, as an insured on her personal $4 million professional liability insurance policy; November 1987, upon discovery and refusal to consent to City encroachment, she was threatened by Fitzpatrick and Hall -- insure City or lose job; subsequent deterioration of Clinic work place safety and sanitation; October 1988, she filed a grievance as to unsafe work conditions; January 11, 1990, City Council disposed of said grievance by voting to transfer her to "jail nurse" -- working under the "overall management" of Huntsville Hospital; May 15, 1990, a job description presented by Perry, effective upon imminent transfer to jail, required her to perform acts in violation of state law -- Bodie felt compelled to, and did, resign. (R1-3-2,3,4,5,6,7,8,9)

conspired, acted in concert, and constructively deprived Bodie of her City employment, without due process of law, in violation of the Fourteenth Amendment . . . demand for relief [3]. (R1-3-9);

Count II.

Defendant City employees and officials and non-City parties, under color of law, conspired, acted in concert, and constructively deprived Bodie of her City employment, by denying her a reasonably safe work place, required by state law and provided to other City employees, in violation of the equal protection of laws guarantee of the Fourteenth Amendment . . . demand for relief. (R1-13-10);

Count III.

---

3. Same demand for Counts I, II, and III -- compensatory and punitive damages, in an amount to be determined at trial; special damages are specifically stated; complaint demands trial by jury. (R1-3)

Defendant City Council members and City employees, under color of law, conspired, acted in concert, and compelled Bodie to leave her City employment, in retaliation for pursuit of her employee grievance, in violation of the free speech and petition guarantee of the First Amendment . . . demand for relief. (R1-3-11); and

Count IV. [4]

All Defendants filed motions to dismiss, (R1-4,5,7,8,10), and the District Court ordered briefs and motion docket. (R1-9,11) After briefs were submitted, the motion docket was rescheduled as a Rule 16(b) pre-trial planning conference. At said conference, motion for leave to amend, with attached second amended com-

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4. Count IV. (R1-3-12), argument for an extension of law to include Article I., Section 10, of the Constitution within the protection of the Fourteenth Amendment, has not been appealed pro se.

plaint, was proffered to Judge Nelson and served on opposing counsel. (R1-12) [5]

On April 22, 1992, holding that "the plaintiff . . . fails to allege any violation of any federally protected right," the District Court granted the motions to dismiss, and taxed costs against Bodie. (R1-13-2) All defendants filed motions for attorney's fees (R1-14,15,16,17,18), and Bodie filed a timely, pro se, notice of appeal on May 15, 1992. (R1-19)

On March 3, 1993, the Eleventh Circuit, stating they had consistently held that "[i]n civil rights and conspiracy actions, . . . more than mere conclusory, notice pleading is required," affirmed the private dismissal of this action and taxed additional costs against Bodie.

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5. All defendants aver, in Appellee briefs, leave to amend was not granted, and express leave is not in the record.

A timely Petition for Rehearing, filed on March 22, 1993, was Denied by the Court of Appeals on April 12, 1993.

REASONS FOR GRANTING WRIT OF CERTIORARI

Writ of Certiorari should be granted for three important reasons: The "law of the circuit" -- "heightened Rule 8" and "meritorious claim" pleading requirements for civil rights and conspiracy actions, and private pre-trial prevailing party award for purposes of taxing costs -- applied as the rules of practice and procedure by the Eleventh Circuit:

1. conflict with the Congressional mandates of the Rules Enabling Act;

2. conflict with applicable decisions of this Court; and

3. project the appearance of bias favoring civil rights defendants.

The Rules Enabling Act, Title 28, U.S.C. Sections 2071, 2072, provides, in relevant part, that federal courts may prescribe rules to govern their business, within limitations imposed by said Act -- Rules shall be consistent with

1. Acts of Congress, section 2071(a), including Title 28, U.S.C. Federal Rules of Civil Procedure, Rule 1 ("These rules govern the procedure in the United States district courts . . . [t]hey shall be construed to secure the just . . . determination of every action."); and

2. Supreme Court decisions prescribing "general rules of practice and procedure," section 2072(a); and

3. "All laws in conflict with such rules shall be of no further force or effect . . . ." section 2072(b).

A. "Heightened Rule 8"

The opinions below both cite the Eleventh Circuit decision holding that: "[i]n civil rights and conspiracy actions, . . . more than mere conclusory notice pleading is required." Fullman v. Graddick, 739 F.2d 553, 556 (11th Cir. 1984). The Court of Appeals' opinion further cites their decision holding that: "[i]n pleading a section 1983 action . . . this heightened Rule 8 requirement -- as the law of the circuit -- must be applied by the district courts; . . . ." Oladeinde v. City of Birmingham, 963 F.2d 1481, 1485 (11th Cir. 1992).

Since this "heightened Rule 8" requirement, on its face --

1. conflicts with Acts of Congress, specifically, Title 28, U.S.C. Federal Rules of Civil Procedure, Rule 8 (notice pleading); and

2. conflicts with the applicable

decisions of this Court, specifically, Leatherman v. Tarrant County Narcotics Unit, ___ U.S. ___, 113 S.Ct. 1160, 1163 (1993) ("We think that it is impossible to square the 'heightened pleading standard' . . . with the liberal system of 'notice pleading' set up by the Federal Rules. . . [i]n Conley v. Gipson, 355 U.S. 41, 47, 78 S.Ct. 99, 103 (1957), we said in effect that . . . Rule [8] meant what it said: . . . ."") --

it follows that this "heightened Rule 8" requirement, as "the law of the circuit," has "no . . . force or effect," section 2072(b), and can not serve as legitimate ground for the dismissal of this action.

B. "Meritorious Claim"

The opinions below both state that this action was dismissed on grounds of Rule 12(b)(6), Fed. R. Civ. P., for fail-

ure to state a claim upon which relief can be granted. A relevant and revealing Eleventh Circuit case states that:

> On a related question about pleading (whether the complaint states a claim), we want to use this opportunity to repeat that, "in an effort to eliminate nonmeritorious claims on the pleadings and to protect public officials from protracted litigation involving specious claims, we, and other courts, have tightened the application of Rule 8 to [sec.] 1983 cases. Arnold v. Bd. of Educ. of Escambia County, 880 F.2d 305, 309 (11th Cir. 1989).
>
> In pleading a section 1983 action, some factual detail is necessary, especially if we are to be able to see that the allegedly violated right was clearly established when the allegedly wrongful acts occurred . . . .

Oladeinde v. City of Birmingham, 963 F.2d 1481, 1485 (11th Cir. 1992).

Since this "meritorious claim" pleading requirement, on its face --

1. conflicts with Acts of Congress,

specifically, Title 28, U.S.C. Federal Rules of Civil Procedure, Rule 8 (notice pleading), Rule 56 (summary judgment -- fair notice and opportunity to offer proof in support of claim), and Rule 1 (these Rules govern . . . just determination of every action); and

2. conflicts with the applicable decisions of this Court, specifically, Leatherman, supra at 1163 ("[F]ederal courts and litigants must rely on summary judgment and control of discovery to weed out unmeritorious claims . . . .") -- it follows that this "meritorious claim" pleading requirement, as "the law of the circuit," has "no . . . force or effect," section 2072(b), and can not serve as legitimate ground for dismissal of this action as "patently frivolous"?

C. "Prevailing Party"

The order and judgment of the courts below imply "prevailing party" defendants, by taxing costs against Plaintiff-Appellant, even though the dismissal of this action flowed from a private, unrecorded Rule 16(b), Fed. R. Civ. P., pre-trial planning conference. (R1-13-2)

Since award of "prevailing party" status to defendants, under the circumstances of this case, on its face --

1. conflicts with Acts of Congress, specifically, Title 28, U.S.C. Federal Rules of Civil Procedure, Rule 1 (these Rules govern . . . the just determination of every action); Rule 77(b) ("All trials upon the merits shall be conducted in open court . . . ."), and Rule 54(d) ("costs shall be allowed . . . to the prevailing party"), and

2. conflicts with the applicable decisions of this Court, specifically,

Farrar v. Hobby, ___ U.S. ___, 113 S.Ct. 556, 573-74 (1992) ("to qualify as a prevailing party, a civil rights [party] must obtain at least some relief on the merits"; "'the moral satisfaction [that] results from any favorable statement of law' cannot bestow prevailing party status. Hewitt v. Helms, [482 U.S. 755] 762, [107 S.Ct 2672] 2676 [1987].") -- it follows that this award of "prevailing party" status to the defendants in this action, as the rule of law in this case, has "no . . . force or effect," section 2072(b), and can not serve as legitimate ground to deprive Petitioner of her money.

Respectfully submitted for your consideration.

Cordelia Ann Bodie

Cordelia Ann Bodie
Petitioner pro se

Certificate of Service

I hereby certify that three copies of this Petition for Writ of Certiorari to the U.S.C.A., Eleventh Circuit, have been properly served on the Counsel of Record (COR) for Respondents by depositing said copies in the United States Mail, properly addressed, postage prepaid, and certified, on the 7th day of June 1993.

Cordelia Ann Bodie

Cordelia Ann Bodie
Petitioner pro se
1128 Hermitage Ave SE
Huntsville, AL 35801

Copy to:

Hon. Kerri Wilson Riley
P.O. Box 308, Huntsville, AL 35804
COR for City of Huntsville and City Council (Kaufmann, Kling, Putnam, Showers, and Wall)

Hon. Michael Fees
P.O. Box 46, Huntsville, AL 35804
COR for Hettinger and Liles

Hon. George Royer
P.O. Box 18248, Huntsville, AL 35804
COR for Fitzpatrick, Hall, and Perry

Hon. Joe Campbell
P.O. Box 2087, Huntsville, AL 35804
COR for Huntsville Hospital and Hamilton

Hon. Donald Spurrier
3226 Bob Wallace Ave.,
Huntsville, AL 35805
COR for W-T-H & Assoc. and Thornton

[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 92-6441
Non-Argument Calendar

D.C. Docket No. 92-N-103-NE

Cordelia Ann Bodie,

Plaintiff-Appellant

vs.

City of Huntsville, [et al.,]

Defendants-Appellees.

Appeal from the
United States District Court
for the Northern District of Alabama

Before ANDERSON, DUBINA and CARNES,
Circuit Judges.

PER CURIAM: (Entered March 3, 1993)

Appellant Cordelia Ann Bodie ("Bodie"), filed a pro se civil rights complaint under 42 U.S.C. 1983 in the United States District Court for the

Northern District of Alabama alleging that the defendants conspired to violate her constitutional rights. The district court dismissed the complaint for failure to state a claim upon which relief could be granted. Moreover, the district court held that Bodie's vague and conclusory allegations of conspiracy were insufficient to state federal constitutional claims.

Our review of the record persuades us that the district court was correct in dismissing Bodie's complaint. We have consistently held that mere conclusory allegations are insufficient to state a claim under 42 U.S.C. 1983, particularly for conspiracy claims. See Oladeinde v. City of Birmingham, 963 F.2d 1481, 1485-87 (11th Cir. 1992) (vague allegations, unsupported by specific facts, constitute no basis for a section 1983 action);

Fullman v. Graddick, 739 F.2d 553, 556 (11th Cir. 1984) ("[i]n civil rights and conspiracy actions, . . . more than mere conclusory notice pleading is required"). Furthermore, absent a loss of pay or rank, there is no Fourteenth Amendment interest implicated by job transfer. See Oladeinde, 963 F.2d at 1486.

Bodie's claims of conspiracy lack the specificity required in civil rights actions and, in any event, she failed to allege how the defendants abridged her free speech rights or any other constitutional right.

For the foregoing reasons, we affirm the judgment of the district court. [1]

AFFIRMED.

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1. There is also pending in this cause the appellees' motion to strike portions of appellant's brief which we deny as moot.

UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 92-6441

Non-Argument Calendar

D.C. Docket No. 92-N-103

Cordelia Ann Bodie,

Plaintiff-Appellant,

vs.

City of Huntsville, et al.,

Defendants-Appellees.

Appeal from the
United States District Court
for the Northern District of Alabama

Before ANDERSON, DUBINA and CARNES,

Circuit Judges.

JUDGMENT

(Entered March 3, 1993)

This cause came to be heard on the transcript of the record from the United

States District Court for the Northern District of Alabama, and was taken under submission by the Court upon the record and briefs on file, pursuant to Eleventh Circuit Rule 34-3;

UPON CONSIDERATION WHEREOF, it is now hereby ordered and adjudged by this Court that the judgment of the said District Court in this cause be and the same is hereby AFFIRMED;

It is further ordered that plaintiff-appellant pay defendants-appellees the costs on appeal to be taxed by the Clerk of this Court.

For the Court: Miguel J. Cortez, Clerk

By: /s/ Deputy Clerk

Issued as Mandate April 26, 1993

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ALABAMA
NORTHEASTERN DIVISION

No. CV-92-N-0103-NE

Cordelia Ann Bodie,

Plaintiff,

vs.

City of Huntsville, et al.,

Defendants.

ORDER OF DISMISSAL

(Entered April 22 1992)

This civil action is before the court on motion of all the defendants to dismiss pursuant to Rule 12(b)(6), Fed. R. Civ. P., for failure to state a claim upon which relief can be granted. The motions have been briefed and submitted for decision. After one complaint, one amended complaint and a proffered second amended complaint, the plaintiff has presented the court with nothing more than

twenty pages of single spaced, typewritten, legal silliness. The motions to dismiss will be granted and the action will be dismissed.

According to the complaint, as last amended, the plaintiff Cordelia Ann Bodie was employed by the City of Huntsville, Alabama, as City Nurse from May 19, 1976, until July 30, 1990, when she resigned her employment. She claims that the defendants conspired to create intolerable working conditions so as to deprive her of the right to employment with the City of Huntsville. The plaintiff recites a series of seemingly unrelated events that allegedly occurred over a period of approximately six years and concludes that she has been the victim of a conspiracy. Vague and conclusory allegations of conspiracy are insufficient as a matter of law to state federal constitu-

tional claims. Fullman v. Graddick, 739 F.2d 553 (11th Cir. 1984).

Without recounting all the many details alleged by the plaintiff, it is sufficient to note that she fails to allege any violation of any federally protected right. Almost without exception, she recounts events having to do with the decision of the City of Huntsville to cease the operation of a City Clinic, of which she was director, and to transfer the functions of that clinic to a public hospital, defendant Healthcare Authority of Huntsville. She claims that she was forced to resign her employment after she was transferred to the city jail because of intolerable working conditions but fails to allege facts which, if proven, would demonstrate that conditions were, in fact, intolerable. She does not claim that she filed any

grievance concerning the alleged conditions at the jail. See, Garner v. Wal-Mart Stores, Inc., 807 F.2d 1536 (11th Cir. 1987).

As noted at the Rule 16(b) conference in this case, the action, at least as to most defendants, is patently frivolous and may entitle them to an award of attorney fees under 42 U.S.C. [sec.] 1988.

The action is DISMISSED and costs are taxed against the plaintiff.

Done, this 22nd of April, 1992.

/s/ Edwin L. Nelson
United States District Judge

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 92-6441

Cordelia Ann Bodie,

Plaintiff-Appellant

vs.

City of Huntsville [et al.,]

Defendants-Appellees

On Appeal from the
United States District Court for
the Northern District of Alabama

ON PETITION FOR REHEARING

(Entered April 12, 1993)

BEFORE: ANDERSON, DUBINA, and CARNES,
Circuit Judges

PER CURIAM:

The Petition for rehearing filed by appellant Cordelia Ann Bodie is denied.

ENTERED FOR THE COURT:

/s/ Joel F. Dubina
United States Circuit Judge